



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,199	09/21/2000	James Say	12008.15USC1	1566

23552 7590 07/24/2002

MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

EXAMINER

NATNITHITHADHA, NAVIN

ART UNIT	PAPER NUMBER
----------	--------------

3736

DATE MAILED: 07/24/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/667,199

Applicant(s)

SAY ET AL.

Examiner

Navin Natnithithadha

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-176 is/are pending in the application.
- 4a) Of the above claim(s) 2-120 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 146-176 is/are allowed.
- 6) ☒ Claim(s) 121, 126, 128-131, 134 and 145 is/are rejected.
- 7) ☒ Claim(s) 122-125, 127, 132, 133 and 135-144 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☒ Interview Summary (PTO-413) Paper No(s) 5.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:

A new section for the Cross-References to Related Applications (See 37 CFR1.78 and MPEP § 201.11) should be added after the title to include the Continuation Application information.

Appropriate correction is required.

2. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware of in the specification.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily

published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 121, 126, 128-130, 131, 134, and 145 are rejected under 35 U.S.C. 102(e) as being anticipated by Ward et al.

In regards to claims 121 and 131, Ward et al discloses a sensor for measuring analyte concentrations, comprising:

an implantable electrochemical sensor 18/122 including an enzyme layer 25 (see Figs. 1 and 2 and col. 4, lines 43-54);

an electrometer 126 and transmitter 130 for transmission of data of sensor 122 to external receiving source using radio signals (see Fig. 7 and col. 7, lines 35-47); and a computer 134/138 including a display monitor (see Fig. 7 and col. 7, lines 41-48).

As to claim 126, Ward discloses the sensor 122 is coupled to a transmitter 130, which includes a power source, for example a battery (see col. 2, lines 45-47).

As to claim 128, Ward discloses a radio signal transmitter 130 (see col. 7, lines 41-43).

As to claim 129, Ward discloses a computer 136 for data monitoring (see col. 7, lines 44-46).

As to claim 130, Ward discloses the analyte is glucose and a glucose responsive enzyme (see col. 4, lines 43-54).

As to claim 134, Ward discloses a computer 138, which includes a display monitor (see Fig. 7).

As to claim 145, Ward discloses the analyte is glucose and a glucose responsive enzyme (see col. 4, lines 43-54).

### ***Allowable Subject Matter***

5. Claims 146-176 are allowed.
6. Claims 122-125, 127, 132, 133, and 135-144, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

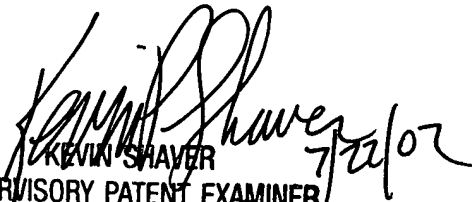
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (703) 305-2445. The examiner can normally be reached on Monday-Friday, 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-3337 for regular communications and (703) 746-3337 for After Final communications.

Art Unit: 3736

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2701.

Navin Natnithithadha  
Patent Examiner  
GAU 3736  
November 8, 2001

  
KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700